the learned trial judge felt himself unable to find that the lorry was delivered to the plaintiff.

As to the question whether the property in the lorry had passed to the plaintiff it is necessary to refer to sections 20 and 21 of the Sale of Goods (Malay States) Ordinance, 1957 which read as follows:—

"20. Where there is an unconditional contract for the sale of specific goods in a deliverable state the property in the goods passes to the buyer when the contract is made, and it is immaterial whether the time of payment of the price, or the time of delivery of the goods, or both, is postponed.

21. Where there is a contract for the sale of specific goods and the seller is bound to do something to the goods for the purpose of putting them into a deliverable state, the property does not pass until such thing is done and the buyer has notice thereof."

The learned trial judge expressed the view, with which I agree, that the indenture dated the 25th February 1957 was clearly in the nature of an unconditional contract for the sale of specific goods. However, he went on to say that the lorry was not in a deliverable state and gave as a reason for that view the fact that the defendant had not taken the necessary steps to cause the lorry to be registered in the plaintiff's name.

In my opinion, the learned trial judge was unduly concerned with the fact that the registration book was not made available to the plaintiff. There is no doubt that he took this fact into account when he decided that the lorry had not been delivered to the plaintiff and that the property in the lorry had not passed to the plaintiff.

The legal position of the registration book has been considered in several cases. One of these is the case of *Sajan Singh* v. *Sardara Ali* [1] where Lord Denning, who delivered the judgment of the Privy Council, said (at p. 54):—

"Their Lordships do not overlook the fact that the defendant remained registered as the owner of the lorry and that no permission was given for the sale: but this did not prevent the property in it passing to the plaintiff. The registration book is not in Malaya, any more than it is in England, a document of title. The title passed by the sale and delivery of the lorry to the plaintiff. The absence of registration would no doubt put the plaintiff in difficulty if he had to prove his title, but it would not invalidate it, see *Bishopsgate Motor Finance Corporation Ltd.* v. *Transport Brakes Ltd.*"

It is clear that the sale of a lorry can be complete and effective even though the registration book is not made available to the buyer. Bearing that in mind, I am of opinion that the learned trial judge should have held that the lorry in the present case was duly delivered to the plaintiff in February 1957. Indeed, the lorry was, in my judgment, in a deliverable state on the 25th February 1957, and the property in it therefore passed to the plaintiff on that day. The fact that the ignition key was in Shaik Dawood's possession makes no difference. A new ignition key could have been easily made or purchased. Moreover, the evidence shows that the plaintiff took delivery of the lorry through Ng Boon Yong, who must be regarded as having been his servant or agent. The plaintiff must therefore be deemed to have waived his right to have the ignition key delivered to him.

For the reasons which I have stated, I would allow the appeal with costs and set aside the judgment of the court below.

Thomson L.P. and **Barakbah C.J. (Malaya)** concurred.

Appeal allowed.

Solicitors: *N. Sharma; Arulanandom & Co.*

LAU ENG TECK v. PUBLIC PROSECUTOR

[A.Cr.J. (Harley J.) September 24, 1964]

[Kuching — Criminal Appeal No. K. 11 of 1964]

Criminal Procedure — Trial — Plea of guilty — Admission of guilt without qualification — Knowingly permitting premises to be used as a brothel — Penal Code, (Sarawak Cap. 57), s. 373C(c).

In this case the appellant was charged with knowingly permitting premises to be used as a brothel. He pleaded guilty and was convicted. The evidence was that a hotel guest was found with a woman in a room in the hotel and that they admitted using the room for sexual intercourse. The appellant said he did not know about the matter as he was playing "mahjong" at the time.

Held: (1) it was clear that the appellant's plea did not constitute an unequivocal plea of guilty and his plea should not have been accepted;

(2) the facts disclosed by the prosecution did not indicate that the appellant's hotel was being used as a brothel, still less that it was so used with the knowledge or permission of the appellant.

MAGISTRATE'S CRIMINAL APPEAL.

George Seah Kim Seng for the appellant.

Wan Alwi (Deputy Public Prosecutor) for the respondent.

Harley J.: In the District Court of Kuching, appellant was charged as follows:

"That you on or about the 21st day of July, 1964 at about 2300 hours, at Kuching, being a person who owns certain premises, to wit, Sarawak Hotel, Padungan Road, Kuching, did knowingly permit such premises to be used as a brothel and thereby committed an offence punishable under section 373C(c) of the Penal Code."

The wording of the charge appears to be an amalgam of sub-sections (b) and (c) of section 373C. One of the grounds of appeal, possibly a sound one, is that the conviction cannot stand, because appellant was found guilty on a charge which does not exist. Section 373C reads as follows:

"Any person who —

(a) keeps or manages or acts or assists in the management of a brothel;

(b) being the tenant, lessee, occupier, or the persons in charge of any premises knowingly permits such premises or any part thereof to be used as a brothel; or

(c) being the owner of any premises, or the agent of such owner, lets the same or any part thereof with the knowledge that such premises or some part thereof are or is to be used as a brothel, or is wilfully a party to the continued use of such premises or part thereof as a brothel, shall be guilty of an offence."

The material part of the magistrate's record is as follows:

"Charge read and explained to accused.

Accused: I plead guilty I ask court to decide. People called woman there.

Pros.: On the 21st of July, 1964 at about 11 a.m. P. 1 Santoh Singh and police party carried out routine check at Sarawak Hotel, Padungan Road, Kuching. He went into a room No. 5 he found the accused and several others at the game of Mahjong. He then checked the register after which he checked room 6 and found a man and a woman indecently dressed inside. Crossed checking in the register the name of the woman was not entered. Only entry made on the man. Both admitted that they used room No. 6 for sexual intercourse. On checking it was found out that the accused was the owner of the said premises and he was present when the incident occurred. It was also found out that the man and the woman had no relationship to each other.

Accused: They closed the door. I do not know. They had just come. I was busy starting playing majong. I do not want to have the case tried. Up to your honour to decide. I ask for leniency.

Court: The accused after the charge have been read and explained to him he pleaded guilty. But after the facts have been explained to him he said, 'they closed the door. I do not know they had just come. I was very busy starting playing majong. I do not want to have the case tried. Up to your honour to decide.' I therefore convict him to the offence charged."

It will be noted that the magistrate, rightly as he is empowered to do by section 161 Criminal Procedure Code (Cap. 58), delayed entering a plea until he had heard the police present the facts of the charge. At that point, however, and particularly after the appellant had made further remarks, it should have been clear that he (appellant) did not understand the nature of his plea, neither did he "intend to admit without qualification the offence alleged against him."

Accused's plea did not constitute an unequivocal plea of guilty. Moreover, the facts disclosed by the prosecution did not indicate that appellant's hotel was being used as a brothel, still less that it was so used with the knowledge or permission of the appellant. Evidence of persistent user is required to constitute premises a brothel. Because one hotel guest has illicit intercourse with one girl in a hotel bedroom, the hotel does not automatically become a brothel. Moreover, before convicting the hotel owner or occupier, the court must be satisfied of his guilty knowledge of the use of the hotel "as a brothel." The District Court record shows that essential ingredients of an offence were lacking, and, in effect, appellant had nothing to plead guilty to.

The trial must be regarded as a nullity. The conviction is quashed and sentence set aside. The police are in theory entitled to bring a fresh charge on the same facts, but they would be very ill-advised to do so without previously consulting the Attorney-General. Mr. Wan Alwi, representing the Attorney-General, has already conceded, and quite rightly, that the District Court record does not show that appellant's hotel was in fact used as a brothel.

Appeal allowed.

PILLAY v. PUBLIC PROSECUTOR

[A.Cr.J. (Ong J.) September 26, 1964]

[K.L. — Criminal Appeal No. 56 of 1964]

Employees Provident Fund Ordinance, 1951, ss. 16A (1) (c) & 18 (2) — Liability of manager of a company.

In this case the appellant who was the manager of Century Motors Ltd. was charged for failing to pay the provident fund contribution of an employee of the company. He was convicted and fined. On appeal,

Held: the manager or other officer in a corporate body is not liable unless he was personally at fault by some negligence or omission in the performance of his duties; although the proof that he was not to be blamed lies on him the burden of proof is a comparatively light one.

Case referred to:—

(1) *R.* v. *Carr-Briant* [1943] K.B. 607.

MAGISTRATE'S CRIMINAL APPEAL.

M. Rajah for the appellant.

Abdul Daim (Deputy Public Prosecutor) for the respondent.

Ong J.: The appellant was charged in the Magistrate's Court at Ipoh under section 16A (1) (c) of the Employees Provident Fund Ordinance, 1951, as manager of Century Motors Ltd., for failing to remit the sum of $11 being the contribution of an employee, in respect of his wages for November 1963, which should have reached the Accountant of the Employees Provident Fund by December 31, 1963. He was convicted and sentenced to a fine of $100, in default one month's imprisonment. He now appeals against such conviction.

The material facts were not in dispute. The employer, Century Motors Ltd., is a small subsidiary company of Borneo Motors Ltd., and its primary object is to serve as a selling organisation for the parent company. Its accounting, personnel and administrative matters are handled entirely by Borneo Motors. The appellant was Ipoh branch manager of Century Motors since 1958. On October 1, 1963 he had engaged one Osman as a temporary substitute driver, who worked for four months, as an employee of